

**ORDINANCE 2008 - 1304**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SAN MARCOS AMENDING CHAPTER 2.16  
(CONTROLS ON CAMPAIGN CONTRIBUTIONS) OF THE  
SAN MARCOS MUNICIPAL CODE**

**WHEREAS**, the Campaign Contributions Ordinance of the City of San Marcos does not currently set forth detailed regulations relating to extensions of credit and the impact and effect thereof;

**WHEREAS**, City Council of the City of San Marcos wishes to amend the ordinance to provide that an additional pre-election campaign statement be filed by each candidate and committee, including independent committees, to provide information to voters, candidates and committees concerning a period that would otherwise not be reported upon until after the election has occurred, to provide additional information to the public and to candidates and committees that would otherwise not be available until after the election.

**WHEREAS**, the Campaign contributions Ordinance does not currently require the City Clerk to file required campaign finance statements online at the City's website;

**WHEREAS**, the Campaign Contributions Ordinance also does not contain detail regarding the retention of special elections counsel to investigate and prosecute violations of the Ordinance, or regarding the scope and extent of the powers to be exercised by such special elections counsel;

**WHEREAS**, in the opinion of this City Council, it is desirable to clarify and to provide further detail regarding the extensions of credit that are currently regulated by its Campaign Contributions Ordinance, and concerning the retention of special elections counsel to enforce the terms and provisions of such Ordinance.

**NOW, THEREFORE**, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos, specifically does ordain as follows:

**SECTION 1.** That Title 2, Chapter 2.16, (Controls on Campaign Contributions), is hereby amended as set forth below:

**CHAPTER 2.16**

**CONTROLS ON CAMPAIGN CONTRIBUTIONS**

**SECTIONS:**

- 2.16.010 Purpose and Intent**
- 2.16.020 Definitions**
- 2.16.030 Campaign Contributions – Limitations**
- 2.16.040 Campaign Statements**
- 2.16.045 Public Record**
- 2.16.050 Violations and Penalties – Criminal and Civil Enforcement**
- 2.16.060 Effect of Violation on Election**
- 2.16.070 Voting and Receipt of Funds**
- 2.16.080 Review of Complaints, Appointment of Elections Counsel, Enforcement Actions**
- 2.16.090 Time Limitations**

**2.16.010 Purpose and Intent.**

It is the intent of the City Council of the City of San Marcos in enacting this Article to place realistic and enforceable limits on the amount which may be contributed to political campaigns in municipal elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, and to insure against election victories based primarily on the amount expended on campaigns.

This Article is intended to supplement the Political Reform Act of 1974, and in the event of a conflict between that Act and this Article, that Act shall prevail. This Article is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 22808 of the California Elections Code.

This Article shall not apply to contributions or other amounts given to a committee, which is organized solely for the purpose of supporting or opposing the qualifications for the ballot or the adoption of one or more City measures.

**2.16.020 Definitions.**

The definitions of the words and phrases defined in the Political Reform Act of 1974 (commencing with Government code Section 81000) or in the regulations adopted by the Fair Political Practices commission (commencing with 2 California Code of Regulations Sections 18202) shall apply to this Chapter. (Ord. 90-842, 4-10-90)

**2.16.030 Campaign Contributions - Limitations.** (Ord No. 2003-1169, 1/28/03)

(a) It is unlawful for a candidate, committee or any other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

(b) No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of such candidate, including contributions to all committees supporting such candidate and all committees controlled by a candidate, to exceed two hundred and fifty dollars (\$250).

(c) Except as provided in subdivision (d), below, an extension of credit which consists of a receipt of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or committee, and where payment is not made until a later date, is a contribution subject to this section 2.16.030.

(d) For purposes of this section 2.16.030, an extension of credit is not a contribution made by the provider of the goods or services or a contribution accepted by the candidate or committee if either subdivision (d)(1) or (d)(2) of this section is met:

(1) Payment is made on or before the later of the following dates:

(a) 60 days after the date of the invoice; or

(b) 60 days from the date the goods or services are delivered; or

(c) For services that are ongoing in nature, 60 days after the date of the invoice, where services are billed no less frequently than on a three-month billing cycle.

(2) All of the requirements of subsections (d)(2)(A)-(E) of this section are met:

(a) The credit arrangement is set forth in a written instrument which is contemporaneous with the initiation of the credit arrangement, and which instrument shall be made available upon request of Elections Counsel appointed pursuant to section 2.16.080, below;

(b) It is part of the regular business of the provider of goods or services to provide similar goods or services;

(c) The provider provides the goods and services in the ordinary course of business and on the same terms and conditions offered to customers generally;

(d) The provider of goods or services enters into the agreement with the intent that the candidate or committee be required to pay in accordance with the terms of the agreement and does not have actual knowledge that the candidate or committee may not be able to pay in accordance with such terms; and

(e) The provider of goods or services makes reasonable efforts to collect the full amount of the balance owed within 60 days of the date that the payment for the goods or services becomes due under the terms of the agreement.

(e) Nothing in this section is intended to limit the amount of his or her own money or property that a candidate may contribute, loan to or expend on behalf of the candidate's own campaign. **(Ord. No. 2003-1169, 1/28/03)**

(f) No candidate or committee shall accept anonymous contributions in an amount exceeding ninety-nine dollars (\$99). **(Ord. No. 2003-1169, 1/28/03)**

(g) If any person is found to have violated the terms of subsections (a) or (b) of this section 2.16.030, whether by civil or criminal enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City's general fund. If any person is found to have violated the terms of any other subsections of this section 2.16.030, the fine imposed in connection with such violation shall be in the amount of \$250 for the first 30 days after said violation, \$500 for the next 60 days after said violation and \$1,000 for any period in excess of 90 days following said violation, and shall be paid to the City Manager for deposit into the City's general fund. **(Ord. No. 2003-1169, 1/28/03)**

(h) The provisions of the Political Reform Act of 1974, as may be amended from time to time, and the regulations of the Fair Political Practices Commission implementing the Political Reform Act with respect to: (i) the receipt and/or acceptance of contributions

and the requirement to report the same; (ii) allowing the return of contributions that exceed limits, and (iii) the ability of candidates and committees to file amended campaign statements, are applicable to the local requirements set forth in this Chapter 2.16.

#### **2.16.040 Campaign Statements.**

Each candidate and each committee shall be required to file those campaign statements mandated by the Political Reform Act of 1974, as amended (Government Code Sections 84100 through 84305), in the times and in the manner required by the Act. This Article imposes an additional local filing requirement on candidates and committees, as follows: **(Ord. No. 99-1072, 9/28/99)**

Pre-election campaign statements shall be filed by each candidate and committee, including independent committees, covering the period from the last reporting date through midnight of the second Sunday prior to the election, which statements shall be filed with the City Clerk by 5:30 p.m. on the last City business day of the week immediately preceding the election date. The required statements may be completed on campaign statement forms required to be filed by state law, so long as such forms are completed in sufficient detail to comply with the requirements of this Chapter.

#### **2.16.045 Public Record.**

Campaign statements filed with the City Clerk shall be a matter of public record. The City Clerk shall, within 3 City business days of the date of filing, post copies of campaign statements online at the City's website.

#### **2.16.050 Violations and Penalties – Criminal and Civil Enforcement.**

(a) Any person who knowingly or willfully violates any provision of this Chapter is guilty of a misdemeanor and shall be punishable in accordance with Section 1.12.020. The maximum fine that may be imposed for each misdemeanor conviction shall be ten thousand dollars (\$10,000) or three times (3x) the amount illegally reported, contributed, expended or given, whichever is greater. **(Ord. No. 2003-1169, 1/28/03)**

(b) In addition to the criminal penalty set forth above, or any other penalty provided by law, any violation of this Chapter may be enforced by civil action brought by the City. As part of any civil action filed to enforce provisions of this Chapter, a court may assess a maximum civil penalty of ten thousand dollars (\$10,000) or three times (3x) the amount illegally reported, contributed, expended or given, whichever is greater, per violation of this Chapter, for each day which any person commits, continues, allows or maintains a violation of any provision of this Chapter. **(Ord. No. 2003-1169, 1/28/03)**

(c) In addition to any other penalty provided by law, any willful or knowing failure to report contributions, done with the intent to mislead or deceive, shall be punishable by a fine of not less than five thousand dollars (\$5,000). (Ord. No. 2003-1169, 1/28/03)

(d) For purposes of this Chapter, civil or criminal enforcement actions may be brought on behalf of the City by the Office of the District Attorney pursuant to the delegation provided by California Government Code Section 91001, or by special elections counsel retained by the City for such purpose. Whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith shall be considered in applying the remedies and sanctions of this Chapter. (Ord. No. 2003-1169, 1/28/03)

#### **2.16.060 Effect of Violation on Election.**

(a) The election to office of any candidate who is convicted of a criminal violation of any provision of this Article shall be void, and such office shall become vacant immediately if the candidate is the incumbent, or upon the date the candidate would otherwise have taken office. The vacancy shall be filled in the same manner as other vacancies in the City offices are filled. If a candidate is convicted of a criminal violation of this Article prior to the time when the election is to take place, his or her candidacy shall be terminated immediately and he or she shall be ineligible for that election. Any person convicted of a criminal violation of this Article shall be ineligible to hold any City office, whether elective or appointive, for a period of five (5) years for each such conviction from and after the date of conviction.

(b) The City Clerk shall not issue any Certificate of Election to any candidate until the campaign statements required by Section 2.16.040, or, if no campaign statement is required, the written declaration permitted by Section 84212 of the California Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974 as amended. The City Council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in accordance with the provisions of this Article. (Ord. 90-842, 4-10-92)

#### **2.16.070 Voting and Receipt of Funds.**

(a) Within twelve (12) months after receiving a campaign contribution or other income totaling one hundred dollars (\$100) or more from any source (other than extensions of credit received for the purchase of goods and services when such extensions are made by regular suppliers of such goods and services or by a financial institution regulated under the laws of the United States or the State of California in the normal course of business under terms and conditions available to the general public), no City Councilmember shall make, participate in making or attempt to influence any government decision or action that will have a reasonably foreseeable material financial effect on the campaign contributor or other source of income that is distinguishable from

its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974. (Ord. No. 2003-1169, 1-28-03)

(b) No City Councilmember shall accept any campaign contribution or other income from any source totaling one hundred dollars (\$100) or more within twelve (12) months after he or she has made, participated in making, attempted to influence or influenced any government decision or action that had a material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974. (Ord. No. 2003-1169, 1-28-03)

**2.16.080 Review of Complaints, Appointment of Elections Counsel, Enforcement Actions.**

The City shall review and investigate written complaints of alleged violations of this chapter. In the event such complaints are received, the City Attorney shall appoint a qualified and independent special counsel ("Elections Counsel" ) in consultation with the City Manager and on such terms and conditions as are generally available in the San Diego County legal community for such work, which Elections Counsel will commence and carry out such review and investigation. If the Elections Counsel determines that there is a reason to believe that a violation of this chapter has occurred, Elections Counsel shall conduct an investigation as it deems necessary for the enforcement of this chapter.

1. The Elections Counsel shall have such investigative powers as are necessary for the performance of duties described in this chapter and may demand and shall be furnished records of campaign contributions and expenditures of any person or committee subject to this chapter. In the event that production of such records is refused, the Elections Counsel may commence civil litigation to complete such production.
2. Persons residing in the City who believe that a violation of this chapter has occurred may file a written complaint with the City Attorney for review by the special counsel. While names of complainants shall not be subject to disclosure unless required by the Public Records Act, anonymous complaints will not be reviewed and/or investigated. If the complaint presents probable cause to believe that a violation has occurred, the special counsel will initiate an investigation of such violation.
3. Action to Enforce. If the Elections Counsel determines that there is good reason to believe that a violation of this chapter has occurred, Elections Counsel may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this chapter.

4. Review, investigation, enforcement, litigation, and prosecution by other than the District Attorney under this chapter shall be commenced and carried out only by the appointed Elections Counsel. Activity by Elections Counsel in accordance with this chapter shall not be subject to review or control by the City Council or City Attorney. The City Attorney shall not review, investigate, prosecute or otherwise deal with any alleged violation of this chapter, but shall defend the constitutionality and legality of this chapter in any civil proceeding in which the City or the City Council is a party.

**2.16.090 Time Limitations.**

Any action alleging a violation of this chapter must be commenced no later than one (1) year from the date of the alleged violation.

**SECTION 2.** If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**SECTION 3.** This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

**INTRODUCED** at a regular meeting of the City Council of the City of San Marcos held on the 22nd day of April, 2008 and thereafter,



**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of San Marcos held on the 13th day of May, 2008 by the following roll call vote:

AYES: COUNCILMEMBERS: JONES, MARTIN, ORLANDO, PRESTON, DESMOND

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

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James M. Desmond, Mayor  
City of San Marcos

ATTEST:

APPROVED AS TO FORM

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Susie Vasquez, City Clerk  
City of San Marcos

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Helen Holmes Peak, City Attorney  
City of San Marcos